No. 03-267

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition for a Writ of Certiorari to the Court of Appeals of Michigan

PETITION FOR REHEARING

Stephen M. Hickel,
8220 Piney Woods
Caledonia, MI 49316
(616-891-8336),
in pro per

PETITION FOR A REHEARING

Pursuant to this Court's Rules 44 and 27.3, Petitioner Stephen M. Hickel, a Michigan and US Citizen, respectfully requests that this honorable court grant his Petition for a writ of certiorari by combining his case with this Court's Docket number 03-051, Silveira v Lockyer case now awaiting conference dated November 26, 2003. This Petition for Rehearing is based on intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

JUSTIFICATION FOR A REHEARING

The basis of the suit against the Respondent was a "now expired" license that had two checkmarks on it. The first checkmark was a block labeled unrestricted. Next to that was a block called restricted. Below that was another field that required an explanation of the restriction. In that field were the words, "for hunting & target and business & banking purposes."

The Michigan Court of Appeals ruled that the Right to Bear Arms is not an absolute right. At no time did the Petitioner ask the court to rule on a question of the right to bear arms as being an absolute right. The Petitioner asked the respondent if the right to bear arms was limited to "hunting & target & business & banking purposes," which was the restriction on his license. The absolute right to bear arms is not the same thing as an unrestricted license. The license itself is a restriction. As such, the Michigan Court of Appeals did not address the specific questions asked of it. In fact, they avoided reviewing the license as a compelling state interest and the restrictions to that license, even though the Petitioner had invoked the US 2nd Amendment (and the State guaranteed right).

The restriction on his license and additional restrictions later placed on his license by the Michigan legislature were for the most part non-compelling interests of the state, -- interests that the Respondent could not prove as

being in the best interest of the US or the State of Michigan.

The Michigan Court of Appeals and the lower tribunals all eschewed the guaranteed right to bear arms. They said it had no bearing on their decisions and that the 2nd Amendment of the US Constitution did not apply to the states.

This wholesale lack of applicability of the 2nd Amendment of the US Constitution to the Michigan tribunals and this courts failure to address that issue leaves unanswered the applicability of a fundamental right and creates a great societal unbalancing of core constitutional rights – some rights receive this Court's highest scrutiny, and the 2nd Amendment doesn't receive any scrutiny.

Furthermore, during this appeal, the Ohio Supreme Court[1] overturned a lower court ruling that stated that the practice of requiring a law-abiding citizen caught with a concealed pistol carried for self-defense having to prove their innocence under a felony charge was unconstitutional. Apparently, that practice is back status quo and the Defendants are back up before felony charges. Another example, the State of Missouri just passed a concealed weapons licensing law that the legislature passed after the Governor vetoed it the first time. A Missouri trial court[2] based in St. Louis declared that law unconstitutional because the MO Constitution forbid the carrying of a concealed pistol, thus completely denying MO citizens of their right to bear a gun in their daily affairs for the security of self and a free state, while waiting on the MO Supreme Court decides to hear the case. Both states, as in Michigan, made it illegal to carry a loaded pistol in the car. In both States, you would have to break the law to transport a loaded pistol and one can not legally bear a concealed pistol – there is no licensing provision. In the Hickel case,

---

[1] Klein v. Leis, 99 Ohio St. 3d 537, 2003-Ohio-4779.

[2] Brooks, et al v. State of Missouri, et al, 034-0425, Missouri Circuit Court, 22nd Judicial Circuit (City of St. Louis)

the trial court said the Respondent had a right to carry a concealed pistol, but it could be restricted. The Petitioner asked the MI Tribunals if the restriction was limited to hunting & target & business & banking purposes and if a police tribunal was a proper forum to decide who had the right to bear an arm.

With the new threat of terrorism, the right of every US citizen to keep and bear arms for security of a Free State needs clarity more than ever before. It is now a matter of the highest national security. Others would have this court believe that the right to bear arms is only for hunting and sporting purposes. As such, they seek to remove from the Nation's arsenal the strongest protector of freedom, the armed militia and their weapons – a check against abuse of police power and a foreign and domestic enemy. By relegating the right to bear arms to simply hunting and target practice & banking & business, seriously degrades this nation's security and further erodes the checks and balances that are inherent in our Constitution. The purpose of the right to bear arms was thoroughly documented in Hickel v Kent County Concealed Weapons Licensing Board. For this court to properly rule on the 2nd Amendment, it must have a case that thoroughly explores the purpose of the right itself. This is that case.

Coincidentally, also before this court is the Docket Number 03-051, Silveira v. Lockyer case, another 2nd Amendment case. This case is currently scheduled for conference on November 26, 2003. Based on the filings in that case and combined with the filings in the Hickel case, the Second Amendment is thoroughly documented for this court. Both cases are critical for this court to do a proper review. Both cases are needed to establish the breadth of the right.

The Respondent believes that the country will be best served if this case is combined with that case and the core 2nd Amendment questions in both cases be heard in unison. Although this Court is a discretionary court, it has come to time for this court to consider the 2nd Amendment issue as to its application to the state. In the matter of Silveira, it

would be to ascertain if the second amendment should have given them standing in California. In the instant matter, the 2nd Amendment and its level of scrutiny should be addressed so that the State of Michigan tribunals have to reconsider their position as to the restrictions of both the license to bear an arm and the restrictions on that license. Said review would warrant a higher level of scrutiny than they applied based on the 2nd Amendment questions being asked both here and in the Silveira case pending conference. It will further clarify any grounds for a 42 USC 1983 or 1985 claim.

As a Naval Officer, the Petitioner took an oath of office, as did the members of this Court, to protect and defend the US Constitution against all enemies foreign and domestic. How is it that this Officer did just that and this court denied him his duty and failed in their duty to clarify the applicability and meaning of the Constitution? How is it that this issue has less significance to this court than whether the word God should appear in the Pledge of Allegiance?

All the Petitioner asks is for this court to combine the two cases in a hearing on the merits and to finally address the questions, is the right an individual right, does it apply to the states, and if so, what level of scrutiny should apply to any review?

For the court to disregard this case in favor of the Silveira case or to deny cert in this case and not the Silveira case is to deny the Country an expansive review of the purpose of the right and how the right was meant to be a check and balance on multiple levels, not just one or two. The Respondent hopes and prays that this court reverses its original decision to deny Certiorari and combine the above two cases (Silveira v Lockyer and Hickel v Kent County Concealed Weapons Licensing Board) in a review on the merits.

CONCLUSION

The State of Michigan, from the Petitioner, through the legislature, to the Courts, have followed policies and practices, created laws, and ruled on matters related to the bearing of arms in a manner that does not apply the 2nd Amendment or a level of review and scrutiny to said right that this Court is likely to find appropriate, as such the Petitioner asks the Court to grant his Petition for Certiorari and join his case with the Silveira v Lockyer case for a review on the merits. The People have a right to know if the 2nd Amendment applies to the states and what standards to apply in protecting it.

Stephen Hickel, Petitioner in Pro Per
X_____
Dated: November 13, 2003

CERTIFICATE OF COUNSEL

I, Stephen M. Hickel, certify that the foregoing Petition for Rehearing is submitted in good faith and not for the purpose of delay. It is my expectation that this honorable court will give its full consideration to this serious matter.

Signed: _____

Stephen M. Hickel

Petitioner, in Pro Per

Dated: 13 November 03